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compensation arises under Article V, when property is taken for the use of the United States.¹⁵ Since the United States cannot be sued without its consent, the contract is not enforceable at law; but a moral obligation clearly exists. A conditional gift of money can only be recovered in quasi-contract;¹⁶ and there can be no recovery in quasi-contract if the money paid, though not legally due, was due *ex æquo et bono*.¹⁷ Accordingly, the enforcement of the contract cannot result in any loss to the claimant beyond the amount of the fee he agreed to pay.

RECENT CASES

ASSAULT AND BATTERY — CRIMINAL RESPONSIBILITY — FORCIBLE PREVENTION OF WRONGFUL LEVY ON DEFENDANT'S PROPERTY. — The defendant, using no unnecessary force, resisted a constable who attempted to attach his goods as the property of another person. *Held*, that he is guilty of a criminal assault. *State v. Selengut*, 95 Atl. 503 (R. I.).

It is a general rule that a trespasser may be resisted with reasonable force. See 1 BISHOP, CRIMINAL LAW, 8 ed., § 861. A wrongful attachment is a trespass. *Buck v. Colbach*, 3 Wall. (U. S.) 334; *McAllaster v. Bailey*, 127 N. Y. 583, 28 N. E. 591. Therefore, on strict principle, it would seem justifiable to resist a wrongful attachment. Some authority supports this view. *Commonwealth v. Kennard*, 8 Pick. (Mass.) 133; *Wentworth v. People*, 4 Scammon (Ill.) 550; *Lassiter v. State*, 163 S. W. 710 (Tex.). Cf. *Smith v. State*, 105 Ala. 136, 17 So. 107. However, since the protection of property by personal force involves a breach of the peace, it is submitted that the rule permitting it can only be justified when the alternative offered by the legal remedies is seriously inadequate. Now, in a wrongful attachment a protection to the owner, not present in a private trespass, is afforded by the liability of the attaching officer on his bond. See 2 FREEMAN, EXECUTIONS, 3 ed., § 272. Furthermore, if private persons were permitted to resist wrongful attachments, it would give debtors an opportunity to resist rightful attachments until they had secreted or disposed of their goods, and would entirely defeat the purpose of mesne attachments. Hence it would seem that there should be no right to resist attachment by force, and the weight of authority supports this view. *State v. Downer*, 8 Vt. 424; *Faris v. State*, 3 Oh. St. 159; *State v. Richardson*, 38 N. H. 208; *People v. Hall*, 31 Hun (N. Y.) 404. It is true that an illegal arrest may everywhere be resisted. *State v. Belk*, 76 N. C. 10; *Massie v. State*, 27 Tex. App. 617, 11 S. W. 638. But such an arrest is an irreparable personal injury which cannot be adequately compensated in damages.

BANKS AND BANKING — NATIONAL BANKS — COLLATERAL ATTACK ON ULTRA VIRES ACT — AUTHORITY TO PURCHASE STOCK IN BUILDING CORPORATION AS INCIDENTAL TO SECURING BANKING QUARTERS. — A national bank

¹⁵ *Brooke v. United States*, 2 Ct. Cl. 180; *Wixon v. United States*, 14 Ct. Cl. 59.

¹⁶ *Williamson v. Johnson*, 62 Vt. 378, 20 Atl. 279. But if a chattel is given conditionally, a breach of condition is a forfeiture, and the donor may replevy the chattel. *Halbert v. Halbert*, 21 Mo. 277.

¹⁷ *Farmer v. Arundel*, 2 Wm. Bl. 824; *Goddard v. Seymour*, 30 Conn. 394. See *Moses v. MacFerlan*, 2 Burr. 1005, 1012. See KEENER, QUASI-CONTRACTS, 43 ff.

Cf. the rule concerning "natural obligations" in the Roman law. See 2 ROBY, ROMAN PRIVATE LAW, 81.

bought shares of stock in a building corporation as part of a transaction in which it leased banking quarters in the building to be erected. The promoter of the corporation contracted to buy from the bank at a later date the stock acquired by it, and deposited security for his performance. When suit was brought on his promise, the defendant set up that the acts of the bank were *ultra vires* and the transaction void. The court *held* that the transaction was *intra vires* and intimated that the authority of the bank was not subject to attack in this manner. *Fourth National Bank of Nashville v. Stahlman*, 178 S. W. 942 (Tenn.).

For a discussion of the principles involved, see NOTES, p. 320.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — CLAIMS AGAINST UNITED STATES — STATUTE LIMITING ATTORNEYS' FEES. — The defendant employed the plaintiff to prosecute a claim against the United States for land taken during the Civil War, and contracted to pay him an amount equal to 33 $\frac{1}{3}$ per cent of the sum recovered. The Court of Claims having found for the claimant, Congress passed a special appropriation act, which provided that not more than 20 per cent of the amount thus appropriated should be paid for attorneys' services. Accordingly, 20 per cent was paid to the plaintiff, who now sues his client for the balance. *Held*, that he may recover, the restriction being unconstitutional. *Moyers v. Fahey*, 43 Wash. L. Rep. 691 (Sup. Ct., D. C.).

For a discussion of the question involved in this decision, see NOTES, p. 328.

DIVORCE — GROUNDS — DESERTION — DEED OF SEPARATION. — When a husband was about to desert his wife, they executed a deed of separation, in which it was mutually agreed that they should live apart, and he agreed to pay her a weekly allowance. About a year later he ceased paying and left for Australia with another woman. *Held*, that the wife is entitled to a divorce on the grounds of adultery and desertion. *Smith v. Smith*, 60 Sol. J. 25 (P. D.).

American courts regard covenants to live apart as against public policy, and therefore unenforceable. *Aspinwall v. Aspinwall*, 49 N. J. Eq. 302; *Smith v. Knowles*, 2 Grant Cas. (Pa.) 413. Thus, though such covenants are evidence of consent to separation, the consent may be revoked, causing further living apart to be desertion. *Schanck v. Schanck*, 33 N. J. Eq. 363. See *Hankinson v. Hankinson*, 33 N. J. Eq. 66, 70. But in England such covenants are now specifically enforced by injunction against proceedings for the restitution of conjugal rights. *Hunt v. Hunt*, 4 DeG. F. & J. 221; *Besant v. Wood*, 12 Ch. Div. 605. See R. J. Peaslee, "Separation Agreements Under the English Law," 15 HARV. L. REV. 638, 653, 654. And under the Judicature Act they may be pleaded by way of defense to such suits. *Marshall v. Marshall*, 5 P. D. 19. Logically they should also be a defense to actions for divorce on the ground of desertion, since the consent cannot be revoked when embodied in a valid contract. *Queen v. Leresche*, [1891] 2 Q. B. 418; *Crabb v. Crabb*, 1 P. & D. 601. However, separation deeds will, upon equitable principles, be held invalid, if they have been procured by fraud or coercion, or if they are unfair to the wife. *Dagg v. Dagg & Speake*, 7 P. D. 17; *Lambert v. Lambert*, 2 Bro. P. C. 18; see *Crabb v. Crabb*, 1 P. & D. 601, 604. Of course a separation deed giving permission to live apart does not include permission to commit adultery. *Morrall v. Morrall*, 6 P. D. 98. But in England proof of adultery by the husband entitles the wife only to a judicial separation: in order [to obtain a decree of dissolution she must also prove either cruelty or desertion. *Fitzgerald v. Fitzgerald*, 1 P. & D. 694; *Balcombe v. Balcombe*, [1908] P. D. 176, 177, 178.

DIVORCE — GROUNDS — DESERTION: REFUSAL TO LIVE WITH HUSBAND'S PARENTS. — The plaintiff petitioned for a divorce, on the ground of his wife's